

Executive Secretary

June 17, 2013

National Labor Relations Board

1099 14<sup>th</sup> Street NW

Washington DC 20570-0001

Mr. Secretary,

Pursuant to 102.67 of the NLRB Rules and regulations, the NLJSP (Petitioner/Appellant) requests an expedited review and offers a prayer for an Order for an immediate Hearing/Election in a remand to Region Five in case 05-RC-106707 ***Elite Protective Services***.

**The Petitioner/Appellant First Argument on why Petition is not Contract Barred**

The Petitioner/Appellant believes there are substantial questions of law or policy inherent in the practice of the RD of Region Five in disregarding overt evidence of the modification of the duration of the Agreement between the Incumbent UNION/Intervener and Employer as evidenced by documents submitted in Petitioner's show cause in the instant case. The Agreement initially executed June of 2011 with a expiration of August 2014 was modified in June 2012 with the inclusion of 2012 wage rates and an amendment to Article XXX Duration of Agreement. The amended duration of agreement established that all clauses of the Agreement would be open in March of 2013. In the period of time from March 2013 until June 12, 2013 negotiations occurred between the Incumbent Union/Intervener and the Employer. There was no contract bar during the period March 2013 and June 12 2013. The RC petition in the instant case was filed during that period. The closing of this open period and the reestablishment of August 2014 as the terminal date of the CBA between Elite Protective Services occurred after the filing of the instant petition. The contract bar was lifted by the parties to the CBA between March 2013 and June 12,2013 and reestablished June 12,2013 to run until July 31,2014.

The contract bar is not an absolute bar to an election there are some well cited examples concerning when a contract bar may be lifted even beyond the voluntary lifting of the bar as it was done in the instant case.

The Petitioner/Appellant, the National League of Justice and Security Professionals, (NLJSP) maintains that the RD should have looked to UGL-UNICCO where the Board said **Second, we modify the “contract bar” doctrine to address a prospect raised in *MV Transportation*: that a challenge to the incumbent union’s majority status by employees or by a rival union might be precluded for an unduly long period, should insulated periods based on the successor bar and the contract-bar doctrines run together.**

The Employer in this case has already been replaced by another Contractor that will assume duties as the Security Provider at the location( 2 Massachusetts AVE NE Washington DC in just a few months.) The CBA will be defunct upon the departure of the Employer on that date and only the economic provisions under 29 CFR 4.53 will continue. Burns will attach as will the Successor Bar under UGL-UNICCO when under the Executive Order Non-Displacement of Qualified Workers the majority are hired. If the holding of the RD in the instant case remains, the contract bar and the successor bar will overlap and the employees in the petitioned for Unit will never be able to express a free choice on remaining with the NASPSO.

The Contract Bar rule is a Board construct the purpose of which is to prevent industrial chaos and promote industrial peace and democracy. It is not a bright line rule but best serves as a strong guideline. As such there are cases and valid reasons to depart from it. The best reason for doing so is that representation elections are the best way to allow the majority to identify their preferred 9(a) representative in the petitioned for unit. In the particular field of Service Contract Act employees, there is no period more critical than Contract Changeover. The implementation of the Non-Displacement of Qualified Workers Executive Order EO 13495 signed 1/30/2009 and the impact of the AHCA of 2010 in the petitioned for unit militate for an honest election.. These are weighty issues best negotiated by a representative with a clear majority. The case **Hexon Furniture Co. 111 NLRB 342 (1955).** has real merit but that merit is diminished in the instant case and is not meant to apply when

the parties to a collective bargaining agreement deliberately and voluntarily lift the contract bar in the middle of the 36 month contract for all clauses.

### **Second Argument on why the Instant Petition is not Contract Barred**

The Petitioner/Appellant is due a Hearing on the Issue of whether a schism exists at the highest level of the NASPSO leadership under *Hershey Chocolate Corp., 121 NLRB 901 (1958)*.

A schism under Hershey is clearly one of the reasons that lifts the contract bar and it is exactly the circumstance that merits a Hearing on the facts. The *Hershey* Schism exists and applies in the instant case because some members of the NASPSO Executive Board believe they have a duty to recover funds stolen by former NASPSO founder Caleb Grey-Buriss as well as improper payments by Mr. Grey-Buriss to other parties all facts established in the US District Court for the District of Columbia. These thefts and improper payments do not concern another faction of the NASPSO board that prefers instead to forget them, continue to ignore DOL report filing deadlines and concentrate on the payment of severance and retirement to Mr Grey-Burriss housed as he is at the expense of the US Government for a period of seventy-six months. This is clearly an insoluble intra-Union dispute at the highest level of the NASPSO and the Petitioner must be allowed to perfect the evidence of this schism on the record of a Hearing. A sustained finding of a Schism under Hershey will easily lift the burden of the contract bar settling like a yoke on the necks of the employees in the petitioned for unit.

The Petitioner prays for an expedited Review and an order directing the Regional Director to conduct an immediate hearing and election in the instant case.

Ronald A. Mikell for the Petitioner/Appellant

National League of Justice and Security Professionals

E-filed to

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I do swear I have served by email this request for review on all parties at interest save only the Executive Secretary of the NLRB where the filing was made by E-file.

Ronald A, Mikell ,affiant \_\_\_\_\_ *Ronald A. Mikell*

Dare\_\_06/20/2013